IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1221 of 2000
to
FIRST APPEALNo 1229 of 2000
with
CIVIL APPLICATION NO 6413 OF 2000
to
CIVIL APPLICATION NO 6421 OF 2000
with
FIRST APPEAL NO 4379 OF 2001
to
FIRST APPEAL NO 4397 OF 2001
with
FIRST APPEAL NO 4408 OF 2001
to
FIRST APPEAL NO 4417 OF 2001

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL
and
Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SPL.LAQ OFFICER
Versus
RAMANBHAI HARIBHAI

Appearance:
1. First Appeal No. 1221 of 2000 2) F.A. No. 4408 of 01
Mr.R.C.Kodekar, Addl.GOVERNMENT PLEADER for Petitioner No. 1-2
Mr.Vijay N Raval for respondent no. 1.

MR GM AMIN for Respondent No. 1
NOTICE SERVED for Respondent No. 2

2. First Appeal No. 4379 of 2001
Mr.A.D.Oza, GOVERNMENT PLEADER
for Petitioner No. 1-2
MR Vijay N Raval for Respondent No. 1
NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE B.C.PATEL
and
MR.JUSTICE SHARAD D.DAVE

Date of decision: 26/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE B.C.PATEL)

1. These appeals are preferred under Section 54 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) read with Section 96 of the Civil Procedure Code.

2. In view of the order passed by Division Bench on 26.7.00, the Record and Proceedings were ordered to be called for and these appeals were ordered to be fixed for final hearing. The short and only question raised by the learned A.G.P. appearing in the matter is that the amount of compensation awarded is excessive and, relying on the award made by the Civil Judge (S.D.) Godhra, the Reference Court has committed an error in awarding the compensation. The learned advocates requested to dispose of the appeals on a short ground; namely the decision with respect to the lands situated at Katol has been delivered by Reference Court earlier and has been confirmed on 23.4.01, in appeals preferred by the State.

3. The lands in question covered under the first group of appeals being F.A.Nos. 1221 of 2000 to 1229 of 2000 are situated at village Boru, Taluka :Kalol, District :Panchmahals. Notification under Sec. 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) was published on 2.10.86. The Land Acquisition Officer, by an award dated 16.11.89, awarded compensation at the rate of Rs. 1.50 ps. per sq.mtr. for binpiyat land and Rs.2.25ps. per sq.mtr for piyat land. After following the procedure laid down in the Act, the lands were acquired and therefore the procedural aspects are not required to be considered. The Reference Court on appreciation of evidence, oral and documentary determined the market price and held that the claimants are entitled

to claim Rs.12/- per sq.mtr. in addition to what was awarded.

4. In the second group of appeals being F.A.Nos. 4379 of 2001 to 4397 of 2001, the lands situated at village Boru, Taluka : Kalol, District : Panchmahals were acquired for Narmada Canal by issuing notification under Section 4 of the Act on 2/10/86. The Special Land Acquisition officer awarded compensation at the rate of Rs.2.20 per sq.mtr. for irrigated lands and Rs.1.50ps. for non-irrigated lands by an award dated 16.11.89. The Reference Court, relying on earlier award with regard to the same village, held that the claimants are entitled to Rs.12/- per sq.mtr. as an additional compensation, over and above the amount awarded by the Land Acquisition Officer.

5. In the third group of appeals being F.A. Nos. 4408 of 2001 to 4417 of 2001, notification under Section 4 of the Act was published on 2.10.86. For the purpose of branch canal of Narmada Project, agricultural lands at village Boru, Taluka : Kalol, District :Panchmahals were acquired after following the procedure as contemplated under the Act. The Land Acquisition Officer determined the market price at Rs.1.50ps. per sq.mtr. The Reference Court, considering that the notification is of the same date, that is to say, covered by the Land Acquisition Reference No. 461 of 1990 (out of which appeals were preferred being the First Appeal Nos. 1121 to 1229 of 2000), awarded an additional compensation at the rate of Rs.12/- per sq.mtr.

5. So far as the market price is concerned, reliance was placed on previous awards. The Reference Court also considered the yield method. There is evidence with regard to fertility and nature of the land. There is evidence on record that crops were taken thrice a year such as maize, paddy, tuver, wheat, cottonseeds, bajra etc. To substantiate the same, revenue records of the village in Form No. 7/12 were produced vide exh. 15 to 26. After deduction of agricultural expenses, they used to earn about Rs.8,000 to 10,000/- per vigha. The Reference Court expressed its opinion, after referring the documents at exh. 15 to 26, that the lands are fertile and various crops as indicated were being reaped. Apart from the facilities such as Primary Health Centre, School, Secondary School, Cooperative Society and nearby Railway Station, the material aspect required to be taken into consideration by the Court was that the village is adjacent to village Katol and lands of both the villages are similar in nature and fertility.

6. There is also evidence with regard to income derived from agricultural products and milk supplied to the Milk Producer Cooperative Society of the village. The Reference Court in para 13, considering the yield method, arrived at a conclusion that by giving multiplier of 10, claimant should get Rs.12/- as an additional amount towards compensation per sq.mtr.

7. In the instant case, reliance is placed on the decision rendered by the Reference Court declaring that the claimants or the land losers at village Katol were held entitled to get Rs.14/- per sq.mtr. Considering the difference, the amount is required to be awarded. So far as the village Katol is concerned, today we have disposed of a group of appeals being F.A. nos. 4400 to 4407 of 2001 wherein we have held that the claimants are entitled to get Rs.21/- per sq.mtr. In that case the notification issued under Sec. 4 of the Act was published on 19.9.91 while in the instant case, notification was published on 2.10.86. Apart from that, the Division Bench disposed the group of F.A. nos. 7642/99 to 7656/99 with F.A.nos. 1424/00 to 1438/00 on 23.4.01. The Division Bench (Coram : M.R.Calla and D.H.Waghela, JJ), after hearing the learned A.G.P. and the advocate for the claimants, dismissed the appeals. In the aforesaid cases, so far as F.A.nos. 1424 to 1438/00 are concerned, notification under Sec. 4 of the Act was published on 11.8.86. The Land Acquisition officer determined the compensation at the rate of Rs.2.70 per sq.mtr. for irrigated land and Rs.1.50 per sq.mtr. for non-irrigated land. The Reference Court awarded additional amount of Rs.14/- per sq.mtr. by an award dated 31.10.99. The Division Bench in para 6 of the judgment, considered the case of lands acquired at village Katol. The Division Bench held that no interference is called for and confirmed the award made by the Reference Court awarding additional compensation at the rate of Rs.14/per sq.mtr. The lands in the cases before us are of village Boru which is adjoining to village Katol. The Apex Court, in case of Thakarsibhai Devjibhai and others V/S Executive Engineer, Gujarat and another reported in 2001 AIR SCW 2417, pointed out in para 12 that the evidence is to be led on behalf of the State to find the difference of land between the two villages. In that case reliance was placed on exh.16 for determination of the market value of the acquired lands. In para 12, the Court pointed out as under : "So far the other question of distance between the two classes of lands, that by itself cannot derogate the claim of the claimant unless there are some such other materials to show that quality and potentiality of

such land is inferior." The Apex Court further pointed out that "no evidence has been led on behalf of the State to find difference between the two. In view of this the inference drawn by the High Court for reducing the compensation by Rs.10/- per sq.mtr. cannot be sustained."

8. In view of what is stated hereinabove and in view of the judgment of the Division Bench in F.A. Nos. 7642/99 to 7656/99 with F.A. nos. 1424/00 to 1438/00, it is not possible to agree with the only contention raised by the learned A.G.P. that the Reference Court has committed an error in determining market price relying on the award for other lands. Therefore, these appeals are dismissed with no order as to costs.

9. It goes without saying that the consequential benefits which flow in view of the award shall be given to the claimants including the interest on solatium as held by the Apex Court in case of SUNDER vs. UNION OF INDIA rendered on 19/09/2001 by the Constitution Bench. The Apex Court in the said judgment pointed out as under:

> "We think it useful to quote the reasoning advanced by Chief Justice S.S.Sandhawalia of the Division Bench of the Punjab and Haryana High Court in State of Haryana Vs. Smt. Kailashwati & Ors. (supra)
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> `Once it is held as it inevitably must be that the solatium provided for under Section 23(2) of the Act forms an integral and statutory part of the compensation awarded to a landowner, then from the plain terms of Section 28 of the Act, it would be evident that the interest is payable on the compensation awarded and not merely on the market value of the land. Indeed the language of S.28 does not even remotely refer to market value alone and in terms talks of compensation or the sum equivalent thereto. The interest awardable under Section 28 therefore would include within its ambit both the market value and the statutory solatium. It would be thus evident that the provisions of Section 28 in terms warrant and authorise the grant of interest on solatium as well.'
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> In our view the aforesaid statement of law is in accord with the sound principle of interpretation. Hence, the persons entitled to the compensation awarded is also entitled to get

interest on the aggregate amount including solatium. The reference is answered accordingly."

9. The learned advocate appearing in the matters requested that the lands are acquired since long and the claimants are awaiting for the compensation. Therefore, we direct that 50% of the amount of compensation shall ne paid within a period of 3 months from today after proper verification and remaining amount shall be paid within 3 months thereafter, after proper verification.

In view of the aforesaid order, Civil Applications for stay are rejected.

(B.C.PATEL, J)

(SHARAD D DAVE, J)

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